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**PUBLIC NOTICE NO. 05-16**

**NEW MEXICO ENVIRONMENT DEPARTMENT  
HAZARDOUS WASTE BUREAU  
SANTA FE, NM 87505**

**NOVEMBER 23, 2005**

**NOTICE OF PUBLIC COMMENT PERIOD**

**CONCERNING INTENT TO APPROVE A CLASS 3 MODIFICATION  
TO THE  
HAZARDOUS WASTE FACILITY PERMIT  
FOR THE  
WASTE ISOLATION PILOT PLANT  
CARLSBAD, NEW MEXICO  
EPA ID NO. NM4890139088**

The New Mexico Environment Department (**NMED**) proposes to approve a modification to the Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (**WIPP**) pursuant to the New Mexico Hazardous Waste Act, NMSA 1978 §§ 74-4-1 through 74-4-14 and the New Mexico Hazardous Waste Management Regulations, 20.4.1 NMAC. The Permittees – the US Department of Energy Carlsbad Field Office (PO Box 3090, Carlsbad, NM 88221) and Washington TRU Solutions LLC (PO Box 2078, Carlsbad, NM 88221) – resubmitted a Class 3 permit modification request (**PMR**) to NMED on June 10, 2005 (subsequently revised on September 22, 2005) that proposed to:

- Allow for the disposal of remote-handled (**RH**) transuranic (**TRU**) mixed wastes pursuant to the 1992 WIPP Land Withdrawal Act (Pub. L. 102-579, as amended);
- Make significant changes to the existing TRU mixed waste characterization requirements;
- Add waste confirmation procedures pursuant to Section 311 of the Energy and Water Development Appropriations Act for Fiscal Year 2004 (Pub. L. 108-137), which was enacted on December 1, 2003 and Section 310 of the Consolidated Appropriations Act for 2005 (Pub. L. 108-447), which was enacted on December 8, 2004 (**Section 311**);
- Increase TRU mixed waste storage capacity at WIPP;
- Designate separate staging areas for TRU mixed wastes undergoing waste confirmation at WIPP prior to storage and disposal; and
- Change the method for demonstrating that the underground disposal rooms at WIPP comply with the environmental performance standards for volatile organic compounds, pursuant to Section 311.

WIPP is located north of Jal Highway (State Highway 128) in Eddy County, New Mexico,

approximately 26 miles east of Carlsbad. WIPP operates under a permit issued by NMED that authorizes the Permittees to manage, store, and dispose of contact-handled TRU mixed waste.

NMED announces the availability of the WIPP draft permit for public comment. In addition, NMED will consider any requests for public hearing and determine whether a public hearing will be held to consider further public comment.

NMED also announces the availability of a fact sheet that sets out in detail the principle basis for NMED's proposal to approve the PMR, and the significant factual, legal, and policy questions considered in preparing the draft permit. The fact sheet also describes elements of the Permittees' PMR that NMED proposes to deny as well as the imposition of additional requirements that were not requested by the Permittees but were deemed necessary by NMED.

On June 28, 2002, the Permittees submitted a Class 3 PMR to NMED to allow WIPP to accept RH TRU mixed wastes for disposal. NMED issued a notice of deficiency (**NOD**) for the RH PMR on March 5, 2003. The Permittees responded by submitting a revised RH PMR to NMED on May 5, 2003. The Permittees also submitted a separate Class 3 PMR developed pursuant to Section 311 to NMED on January 9, 2004. NMED issued a NOD for the Section 311 PMR on December 30, 2004. NMED held informal meetings with the Permittees between January and March 2005 to discuss both the RH and Section 311 PMRs. On March 29, 2005 NMED issued a second NOD for the RH PMR, directing the Permittees to develop a consolidated response for both RH TRU wastes and Section 311. The Permittees submitted a consolidated response and revised PMR, combining the RH and Section 311 PMRs, to NMED on April 29, 2005. The Permittees resubmitted the PMR on June 10, 2005 to correct certain layout and typographical errors. NMED issued a NOD on September 1, 2005 on the consolidated PMR, to which the Permittees responded with additional revisions on September 22, 2005. This public notice addresses the draft permit developed by NMED based upon the June 10 and September 22, 2005 submittals from the Permittees.

## **PUBLIC REVIEW OF THE DRAFT PERMIT**

A copy of the WIPP draft permit, public notice, and fact sheet may be reviewed during the public comment period at: NMED, Hazardous Waste Bureau, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico, 87505, (505) 428-2517, Attn: Mr. James P. Bearzi; and on the NMED web site ([www.nmenv.state.nm.us/wipp](http://www.nmenv.state.nm.us/wipp)). The entire administrative record for this administrative action may be reviewed at the Hazardous Waste Bureau at above address.

## **PUBLIC HEARING**

If a timely written notice of opposition to the draft permit and a request for public hearing is received, NMED, acting in conjunction with the Permittees, will respond to the request in an attempt to resolve the issues giving rise to the opposition. If such issues are resolved to the satisfaction of the opponent, the opponent may withdraw the request for a public hearing. If the opponent does not withdraw this request, the NMED Secretary shall schedule a public hearing. NMED shall also schedule a public hearing if the Secretary determines no later than five (5) days following the end of the public comment period that a public hearing should be held, notwithstanding the absence of a timely request for public hearing.

## **PUBLIC COMMENT**

Any person, including the Permittees, wishing to comment on the draft permit or request a public hearing should submit written or electronic mail (e-mail) comment(s) with the commenter's name and address to the address below. The public comment period begins on November 23, 2005 and continues through January 23, 2006. Only comments and/or requests received on or before 5:00 p.m. January 23, 2006 will be considered. If a public hearing is scheduled, the comment period is automatically extended to the close of the public hearing.

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Written comments shall be based on all reasonably available information and include, to the extent practicable, all referenced factual materials. Documents in the administrative record need not be re-submitted if expressly referenced by the commenter. Requests for public hearing shall provide: (1) a clear and concise factual statement of the nature and scope of the interest of the person requesting the hearing; (2) the name and address of all persons whom the requester represents; (3) a statement of any objections to the permit modification, including specific references; and (4) a statement of the issues which such persons proposes to raise for consideration at the hearing. NMED will provide a thirty (30) day notice of a public hearing, if granted.

#### **PROCEDURE OF ISSUANCE OF FINAL PERMIT DECISION**

NMED must ensure that the approved final permit is consistent with the New Mexico Hazardous Waste Management Regulations (20.4.1 NMAC). All written comments submitted on the draft permit will be considered in formulating a final decision and may cause the draft permit to be modified.

NMED will respond in writing to all public comments. NMED's response will specify which provision, if any, of the draft permit have been changed in the final permit decision, the reasons for the change, and briefly describe and respond to all public comments on the draft permit or the permit modification request raised during this and prior public comment periods. All persons presenting written comments or who requested notification in writing will be notified of NMED's decision by mail. This response will also be posted on the NMED WIPP website.

After consideration of all the written public comments received, NMED will issue, modify and issue, or not issue the permit. If NMED modifies and issues the permit, the applicant shall be provided by mail a copy of the modified permit and a detailed written statement of reasons for the modifications.

The NMED Secretary will make the final permit decision publicly available and shall notify the applicant by certified mail. The Secretary's decision shall constitute a final agency decision and may be appealed as provided by the

Hazardous Waste, NMSA 1978 §§ 74-4-1 through 74-4-14.

#### **ARRANGEMENTS FOR PERSONS WITH DISABILITIES**

Any person with a disability requiring assistance or auxiliary aid to participate in this process should contact Judy Bentley at the following address: New Mexico Environment Department, Room N-4030, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico 87502-6110, (505) 827-2844. TDD or TDY users please access Ms. Bentley's number via the New Mexico Relay Network. Albuquerque users may access Ms. Bentley's number at (505) 275-7333.

#### **ADDITIONAL INFORMATION**

Any person seeking additional information regarding this draft permit, or who would like to arrange for copies of the draft permit or portions of the administrative record at a reasonable cost to the requestor, may contact Mr. James P. Bearzi at the Hazardous Waste Bureau, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505, (505) 428-2500.